

**CITY OF DOVER PLANNING COMMISSION
MARCH 19, 2018**

The Regular Meeting of the City of Dover Planning Commission was held on Monday, March 19, 2018 at 7:00 PM in the City Hall Council Chambers with Chairman Mr. Tolbert presiding. Members present were Mr. Holden, Mr. Roach, Ms. Edwards, Mr. Holt, Mr. Baldwin, Dr. Jones, Mrs. Welsh, Ms. Maucher and Mr. Tolbert.

Staff members present were Mrs. Dawn Melson-Williams, Mr. Eddie Diaz, Mr. Jason Lyon, Mr. Julian Swierczek and Mrs. Kristen Mullaney. Also present was Mr. Brian Finnegan. Speaking from the public was Mr. Michael Morton.

APPROVAL OF AGENDA

Mrs. Melson-Williams stated that there are a few updates to the agenda. First, is the correction of an application file number. Item #1 under New Applications, that application file number should be MI-18-03. It's listed on the agenda as MI-18-02. They discovered that there were two files that had the same file number so this text amendment being heard tonight is now tied to MI-18-03. Also, Site Plan S-18-03 Lidl Grocery Store & Retail Space at North DuPont Highway and Kings Highway NE will not be heard this evening at the request of the applicant to defer consideration. As noted on the agenda, that application and its public hearing will be rescheduled for a future meeting and will be subject to public notice requirements at that time. They did not complete public notice for this meeting, but it was on some of their information that could potentially be heard at this meeting.

Mrs. Welsh moved to approve the agenda as updated, seconded by Dr. Jones and the motion was unanimously carried 9-0.

**APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF
FEBRUARY 20, 2018**

Ms. Edwards stated that there are typos on two of the applications from the February meeting that state Mr. Edwards instead of Ms. Edwards. Responding to Ms. Edwards, Mr. Tolbert asked that the record show the corrections to the minutes from February 20, 2018.

Mrs. Welsh moved to approve the Planning Commission Meeting minutes of February 20, 2018, seconded by Mr. Holt and the motion was unanimously carried 9-0.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams stated that the next Planning Commission regular meeting is scheduled for Monday, April 16, 2018 at 7:00pm in the City Council Chambers.

Mrs. Melson-Williams provided an update on the regular City Council and various Committee meetings held on February 26 & 27, 2018 and March 12 & 13, 2018.

Mrs. Melson-Williams stated that the Planning Office has started some of the initial steps in what will be the *2019 Comprehensive Plan* for the City of Dover. They have started some of the thinking process about how they are going to go about that so the Commission will definitely be

hearing more on that as we move through the upcoming months.

Mrs. Melson-Williams stated that there is a training opportunity from the University of Delaware Institute for Public Administration. Their next session which is Planning 203 which is scheduled for Friday, March 23, 2018 at the Paradee Center. If a Commission member is interested, Planning Staff can get them registered. It's Advanced Land Use Development Administration.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Melson-Williams presented the audience information on policies and procedures for the meeting.

OLD BUSINESS

1) Requests for Extensions of Planning Commission Approval: None

2) Revisions to Applications:

- A. S-17-12 Capital Station Dover at 50 North DuPont Highway: Architecture Review – Review of Architecture for Building 4 associated with the commercial development to be known as Capital Station, at the northwest corner of North DuPont Highway and Division Street and also adjacent to Maple Parkway. The Planning Commission granted conditional approval on June 19, 2017 to the Site Development Plan S-17-12 for the development consisting of a 24,197 S.F. retail and restaurant multi-tenant building, a 6,625 S.F. retail and restaurant multi-tenant building, a 6,100 S.F. retail or restaurant building, a 6,080 S.F. restaurant building, and a 21,998 S.F. grocery store. Related site improvements include demolition of the former Playtex factory and provision of parking, landscaping, and pedestrian and bicycle facilities for the shopping center. The property is zoned SC-1 (Neighborhood Shopping Center Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone – Tier 1: Secondary Wellhead Protection Area). The owner of record is Capital Station Dover LLC. Property Address: 50 North DuPont Highway. Tax Parcel: ED-05-077.06-01-02.00-000. Council District: 2.

Representative: Mr. Brian Finnegan, Capital Station Dover LLC

Mr. Diaz stated that back in June of 2017, the Planning Commission granted conditional approval of the Site Plan for Capital Station at 50 North DuPont Highway. As part of that approval, the Commission approved the architecture for four out of the five proposed buildings on the site. Those building include a 24,000 SF retail and restaurant building, a 6,600 SF retail and restaurant building, a 6,100 SF retail/restaurant building and a 22,000 SF grocery store. At that time, the Commission did not receive the architecture for Building 4 on the site which is in the northeast corner. The applicants were told that they would need to submit the architecture at a future meeting of the Planning Commission. They have submitted the architecture for this building that was seen before when the Comprehensive Sign Plan for the shopping center came through. This is the proposed appearance of a restaurant building which includes a variety of materials and colors throughout the building. Staff assessment of the architecture is that it complies with the Architectural Guidelines of the *Zoning Ordinance*. Tonight, the Planning

Commission needs to either approve the architecture as submitted or if necessary, request changes.

Mr. Finnegan stated that Mr. Diaz stated perfectly why they are here tonight. He has nothing to add; he is just here for any questions or concerns that the Commission has regarding the architecture.

Mr. Tolbert questioned if the applicant had any problem working with Staff in a collaborative manner with whatever requests or statements that they may make regarding the application? Responding to Mr. Tolbert, Mr. Finnegan stated no.

Mr. Holden moved to approve S-17-12 Capital Station Dover at 50 North DuPont Highway: Architecture Review for Building 4, seconded by Mrs. Welsh and the motion was carried 9-0 by roll call vote. Mr. Holden voting yes; due to the pass success of the Site Plan and Staff comments. Mr. Roach voting yes; it looks beautiful and it's going to be a welcomed addition. He loves the fact that the applicant took attention to detail to add signage to the back of the building. Ms. Edwards voting yes; she thinks that it will make a great addition to the City of Dover. Mr. Holt voting yes; it will be a great addition to the site. Mr. Baldwin voting yes; for the reasons previously stated and also the colors tend to tie in with the rest of the complex. Dr. Jones voting yes; it's a welcomed addition and things are moving along nicely. Mrs. Welsh voting yes; for all of the reasons previously stated. Ms. Maucher voting yes; for reasons previously stated. Mr. Tolbert voting yes; he sees no reason to change his vote. He votes yes before and the changes that are being presented now do not constitute a need to make any changes to his previous vote.

NEW APPLICATIONS

1) MI-18-03 Text Amendments: Manufactured Housing and Land Lease Communities (Dover Code of Ordinances, Chapter 66 and Zoning Ordinance, Article 3, Section 8 and Article 12) – Public Hearing and Review for Recommendation to City Council on Text Amendments to the *Dover Code of Ordinances*, Chapter 66 - Manufactured Homes, Mobile Homes, and Land Lease Communities; to *Zoning Ordinance*, Article 3, Section 8- Manufactured Housing (MH) Zone; and to *Zoning Ordinance*, Article 12- Definitions. The proposed ordinance reorganizes and clarifies a portion of the updates to the Dover Code made in August 2016 through Ordinance #2016-16. The proposed ordinance also brings the updates into compliance with provisions of the *Delaware Code* related to manufactured housing and rental housing, particularly Title 25, Chapters 53, 55, 70, and 71. The updates affected include requirements for placing and licensing manufactured homes, standards for management and maintenance of land lease communities, taxation, and code enforcement. A distinction is also made between manufactured homes and permanently placed manufactured homes in the *Zoning Ordinance*.

- A copy of the Proposed Ordinance #2018-01 is available on the City's website www.cityofdover.com under the Government Heading: Ordinances, Resolutions & Tributes. <https://www.cityofdover.com/ordinances-and-resolutions>

The Legislative, Finance, and Administration Committee reviewed the proposed Text Amendments on February 13, 2018 and the First Reading before City Council occurred on February 26, 2018.

The Public Hearing before the Planning Commission is set for March 19, 2018 and Public Hearing and Final Reading before City Council is on April 9, 2018.

Representative: None

Mr. Tolbert recused himself because he is resides in a manufactured home.

Mr. Diaz stated that this is series of Text Amendments to the *Dover Code of Ordinances*. The majority are in Chapter 66 Manufactured Homes, Mobile Homes and Land Lease Communities. A few are also in the *Zoning Ordinance*, Article 3 Section 8 which is the Manufactured Housing Zone and the *Zoning Ordinance*, Article 12 Definitions. We last had a major update to the provisions of the Code dealing with manufactured housing back in August 2016. Following that update and some concerns raised by the manufactured housing community, they recognized the need for additional changes to better conform the Ordinance with State Law and then also to clarify the procedures for enforcing the Ordinance and finally to reorganize Chapter 66 so that it would be easier to navigate and present the information in it in a more straight forward manner. Some of the substantial changes of this Ordinance include adding provisions to let land lease community owners pass on maintenance responsibilities to tenants. There are also revised provisions for office hours and rent receipts. In the *Zoning Ordinance*, there are provisions establishing that homes which are taxed and homes which only pay manufactured home license fees would not be permitted on the same parcel of land in order to simplify the Tax Assessor's tracking of what is taxed and what isn't.

We received a few comments from the Development Advisory Committee regarding the proposal. One is that stormwater facilities should be added to the list of private utilities a community owner would normally be responsible for. That has resulted in Staff Amendment #1 which can be found at the end of the DAC Report. The other major comment was that the Chief Building Inspector asked us to cross check the proposed changes with the upcoming proposed changes to the Building Code which is being updated from the 2009 version of the International Residential Code to the 2018 version. The 2018 version contains its own provisions for manufactured homes and they were asked to make sure that there would be no conflicts. Tonight, the proposed ordinance updates need either a positive or a negative recommendation from the Commission members. Staff will forward that recommendation to City Council for their approval or denial of the Ordinance.

Mr. Holt stated that he noticed that some of the streets going into the trailer parks need a lot of work done. Some of them have bad holes in the streets and if you are not careful you will end up losing a wheel or something. He questioned if this Ordinance will try to correct this situation in the parks? Responding to Mr. Holt, Mr. Diaz stated that where the streets are the private property of the manufactured housing community, this should create some stronger provisions for enforcing that maintenance.

Ms. Maucher questioned if there has been any input from the manufactured home community owner/operators or residents/tenants? Responding to Ms. Maucher, Mr. Diaz stated that input from the manufactured housing community owners was in large part of what lead to these proposed amendments during the second round. Their concern with the original amendment that

passed in 2016 was that it might contradict some aspects of State private property laws. The original Ordinance didn't contain allowances for them to by contract, assign maintenance over certain parts of their community to their tenants. For instance, the area immediately surrounding their homes and the landscaping that might be in that. That was the major concern that led to the change, but Staff believes that they have gone further than that in making the Ordinance clearer than it was before.

Dr. Jones stated that her concern would be if the homeowners had benefit of reading or hearing the changes or was the complete confidence placed in Staff and others to make the revisions? She is not uncomfortable; she just senses that there was reference to the concern from the very beginning. Responding to Dr. Jones, Mr. Diaz stated that homeowner representation was mainly led by Councilman Neil who sponsored the Ordinance.

Mr. Holden questioned if Staff could count the changes as being more or less protective of the tenants or provide us some commentary towards that end that gives them a flavor for what the changes are going to impart in the practical sense moving forward. Responding to Mr. Holden, Mr. Diaz stated that the original intent of the Ordinance updates in 2016 was definitely to be protective of the tenants by the provisions for maintenance directed at the community owners, adding better record keeping requirements, the requirement to post office hours where an onsite representative of the owner would be required to be at the community and things like requiring the owner to provide receipts to homeowners when they made payments for rent. With this latest Ordinance update, they have rolled that back a little bit to make things a bit easier on the community owners because their feedback was that the new provisions were too strict and didn't allow them the flexibility they needed to work with the tenants to share maintenance and responsibilities.

Mr. Holden stated that he found it a little odd that in order to move a manufactured home from its current site the owner has to get a Demolition Permit. Is it just lack of another process that it would account for? He is not sure why a Demolition Permit applies there. Responding to Mr. Holden, Mr. Diaz stated that a Demolition Permit applies because although the house itself may not be disassembled or trashed, there are still things that would have to happen to the site that would potentially be considered demolition like removing the footers of the old house, disconnecting utilities, etc. It is a sort of a misnomer for naming but that is something that has not changed since before the 2016 Ordinance.

Mr. Tolbert stated that Mr. Diaz made a statement that the development owners are responsible for the streets in the communities of manufactured homes or mobile homes. Responding to Mr. Tolbert, Mr. Diaz stated that where the streets are actually on the landowner's property and where they are private street they (the landowners) need to be responsible for the streets.

Mr. Tolbert stated that why he raised that question is because the development in which he lives in, the homes are on a permanent foundation and the streets are owned by the City. The City is responsible for the streets and therefore they pay for street repair and snow removal. Responding to Mr. Tolbert, Mr. Diaz stated that Persimmon Park Place is a manufactured home community that unlike the others in the City is not also a land lease community. There is no overarching land owner who owns all of the land beneath the manufactured homes. The homes and the lots are

owned by the individual homeowners and the streets in the development are owned by the City so this amendment would not apply to the streets in that particular development.

Dr. Jones stated that in the 2016 version, the land lease community owner was held responsible for all of the maintenance and she thinks that she read that the responsibility was going to be split or shared. Responding to Dr. Jones, Mr. Diaz stated that what it does is it allows the maintenance to be split or shared. It doesn't say that the land owner must do this or the tenant must do this; it says that the landowner must be responsible for all maintenance unless it is specifically designated to a tenant by a private contract.

Dr. Jones questioned if this change was initiated to be a little easier on the community owner? Responding to Dr. Jones, Mr. Diaz stated yes.

Mr. Holden stated that to the specific point that Dr. Jones was trying to make, in Section 66-4(a)v. Delegation of Maintenance Duties, that seems to allow under appropriate contract the responsibility of maintenance for roads or other to be transferred. The challenge is how do they ensure that that's a process that typically the residents of land lease communities are able to understand and proceed through. It tilts the favor back towards the land lease underlying owner and he doesn't necessarily know that that is bad or good but it's a challenge that he thinks maybe some more discussion is needed on. Responding to Mr. Holden, Mr. Diaz stated that in terms of the City determining or learning who is responsible for what, it is something that Planning Staff is going to have to work closely with Code Enforcement Staff on who in turn will have to work closely with the community owners and residents. Currently, when routine Code Enforcement issues come up in a lot of the manufactured home parks, for instance, trash left out on the street our Code Enforcement Officers go to the homeowners first. For less routine things like potholes in the road, they will go to the community owners first. He foresees that under the new Ordinance, that will largely continue to be the case. In cases where a land owner or a community owner can furnish proof in the form of the contract in question that responsibility needs to go to a different party then our Code Enforcement Staff can be redirected accordingly.

Mr. Holden stated that other than the correspondence you have had with the owners of these types of properties have you had other entities push for that allowed delegation of maintenance? Responding to Mr. Holden, Mr. Diaz stated no.

Mr. Holden questioned if currently it is the underlying owner that is responsible? Responding to Mr. Holden, Mr. Diaz stated that under the current 2016 Ordinance, the letter of the Code holds the owner responsible but their allegation to Staff is that they could not be held responsible because the language of the Code that is currently in place would go against other laws. The allowance for the delegation of maintenance responsibilities to a different party comes from the *Delaware Code*, Title 25 Chapters 53 and 55 which is the Landlord Tenant Code. Without the addition of this particular provision, they would be going against State Law.

Mr. Holden questioned if the City Solicitor offered that opinion to Staff? Responding to Mr. Holden, Mr. Diaz stated yes, he believes so.

Mr. Holden stated that his concern is that it is easy to pass off responsibility to an HRA or a

Homeowner's Association. He knows the wrangle that we have had in the State with getting Homeowner's Associations to take care of their roads and their stormwater ponds and generally it's a process that doesn't work. His concern is that the responsibility gets passed along and then allows these facilities to fall under greater disrepair. Those HOA's are much harder to get called to task to rectify a situation. He personally would love to challenge the City Solicitor to find us a path that can hold the underlying land owner, the person with the means to resolve a lot of these issues more responsible. At the end of the day, that cost likely gets flowed through to the residents but then they ensure as a City that these areas are going to be maintained and not have a negative drain on the City as a whole. He would seek from Staff a path to allow that time. How might the Planning Commission offer a pause to give that a closer look?

Ms. Maucher questioned if there was any requirement that the entity receiving responsibility has the technical expertise or the knowledge or financial ability to carry out those responsibilities? It's kind of vague in that regard and having dealt with failing wastewater systems, it can be unpleasant if they don't have the expertise. Responding to Ms. Maucher, Mr. Diaz stated that from a practical standpoint, he has a hard time foreseeing a circumstance where a land lease community owner would assign a homeowner responsibility for maintaining the whole stormwater pond behind their house. More typically, the sorts of maintenance responsibilities that are delegated are responsibility over the lot that the house sits on maintaining that lot free of trash or maintaining grass and whatever grass and bushes might be planted around the house. Without this provision, a homeowner could theoretically plant their own landscaping around the house and instead of taking care of it themselves; they could say it was the community owners so they should maintain it.

Mr. Holden stated that there certainly seems that there should be the ability to split out maintenance on the lot which he thinks is the issue with the Landlord Tenant Code and also maintenance of the roadways and/or utilities which are ones that a single resident has no ability to impact. He thinks that we could all agree that HOA's generally are not as adept as the underlying owner at taking care of those. He doesn't know our path and he asks Staff how the Commission can put this back in Staff's laps and give them some time to do what they may do with it? Do they table this action for the evening? He personally doesn't think that putting roads and utilities in an HOA is the right path either for the residents or for the City as a whole. Responding to Mr. Holden, Mrs. Melson-Williams stated that if the Planning Commission has some concerns about a particular section they could certainly in taking their action this evening make the recommendation that certain provisions or topic areas be further addressed or evaluated by Staff to bring additional information back to the Commission. The Commission could certainly do that without making a final recommendation on the entire package. This is subject to public hearing this evening. As with all text amendments, that (notice) was published in the local newspaper so there is that opportunity as well as being posted on these various agendas and the First Reading that occurred at City Council. There is nothing in our Code that requires us to send this proposed Text Amendment to every property owner and/or tenant that it may affect. On the question about how to move forward with this package, if you have concerns about the Text Amendment and would seek additional information you could certainly defer action on it until you receive a specific list of information and it could be brought up for continued discussion at a specific future meeting of the Commission.

Mr. Tolbert stated that in his experience with HOA's they don't seem knowledgeable enough to carry out the duties that they are supposed to carry out in being responsible for the developments that they are overseeing.

Dr. Jones stated that as we possibly defer action she would suggest that there are a couple of other things, in her opinion, that need to be tightened. She is not trying to make things difficult for the community owners. On Page 5 Office Hours (line 185), in her mind this doesn't really give a feeling of assurance to the tenants that there are going to be regular fixed office hours. Maybe she is adding a little bit too much to this and she doesn't want to nit-pick but if this is what people have to live by then we want to make very certain that there is not a lot left for interpretation. In Section 66-4(b)ii Receipt for Lot Payment (line 194), has this not been the case in the past? Responding to Dr. Jones, Mr. Diaz stated that there have been comments from various homeowners that they do not receive receipts for payment of rent so that was one of the things desired in the original 2016 Ordinance that is still here.

Ms. Maucher questioned if the additions comport with the Landlord Tenant Code? Responding to Ms. Maucher, Mr. Diaz stated that the Landlord Tenant Code does include provisions for the provision of receipts. The feedback received on that was that those provisions don't go far enough so we were asked to make our provisions for rent receipts more strict.

Mr. Tolbert opened a public hearing.

Mr. Michael Morton – First State Manufactured Housing Association

Mr. Morton stated that he is the President of First State Manufactured Housing Association and he also represents many of the community owners in the State of Delaware. He brought with him comments that he would like included in the record (*a copy was provided to the Commission*). He can represent to the Commission as an attorney who has been practicing in Delaware for over 35 years that the parts of Mr. Diaz's presentation that he heard were inconsistent with the law. This proposed Ordinance is a revision of changes that were passed roughly 18 months ago. They were stayed by agreement with the City Executive so that interest holders like himself and his clients could participate in the redrafting. They were told that they would be actively engaged in redrafting and the first notice that we got of a redraft was roughly 10 days ago that it was completed and would be heard this evening. This is quite a surprise to those of us who appeared at a prior time when the first version of this was heard. They have considerable concerns on the concept of pre-emption. He brought with him a case from the Supreme Court of Delaware that says these matters are pre-empted by State Law. That the efforts of the Dover City Council and the Planning Commission; however noble, conflict directly with the expressed provisions in the Manufactured Housing Act and are therefore unenforceable. He has gone through every single line of this Ordinance and he has highlighted roughly twenty-five specific examples where it conflicts with the Manufactured Housing Code. That is why this was stayed by agreement so that they could go through those to discuss them with the Solicitor. The Solicitor is well aware of their concerns about the constitutionality of this Ordinance and the enforceability of the Ordinance. Since he is handing out copies he will not go through every single thing. He will simply point out two very specific things and then a number of examples. The applicable Manufactured Housing Code Section 7001 very specifically says that in reference to the relationship between a landlord and a resident in a manufactured housing community, this Code

regulates and determines that legal rights, remedies and obligations of all parties to a rental agreement wherever executed for a lot, a manufactured home and a manufactured home community within the State. The second provision that is in difficulty with this is the State Installation Code. It is very specific that it is the only Code governing installations of manufactured homes. The reason that he points out both of these is that multiple sections of this proposed Ordinance conflict directly with that. The Supreme Court in *Cantina vs. Montana* back in 2005 referring back to a case in 1965 had made it absolutely clear that the prerogative on issues of this nature belong to the House and the Senate not to local entities like cities and counties. The purpose statement for this Ordinance itself clearly conflicts both with the purpose statement of the State Code and with the specific elements. Your purpose statement says that “this subchapter applies to rental agreements for manufactured home lots and regulates and determines legal rights and remedies.” It also references obligations for communications and other specific issues on maintenance and the like. All of these are specifically referenced in the State Code under the concept of pre-emption that determines the scope of those. This body is not authorized, empowered or cannot enforce an Ordinance that tramples on the specific language of the Manufactured Housing Code. The Manufactured Housing Code also says that sole enforcement rights of those rights and responsibilities lies with the Attorney General’s Office. From the beginning to the end, we have great concerns about this. He has written portions in his comments by line with specific references to the fact that even the definitions that the City has proposed to use conflict with the long term well recognized definitions in the Manufactured Housing Code. The Manufactured Housing Code which he calls in this response, sets forth extensively the maintenance requirements of land community owners such as Wild Meadows within the City of Dover. It sets forth the responsibilities and the obligations and it also sets forth the remedies for landlords and tenants in this relationship. They are extensive provisions and they distinctly define the rights and responsibilities of each party. Under the concept of pre-emption, you as a City cannot enlarge, decrease or impact of State stated rights and responsibilities however laudable your concerns might be. In the section of this proposed Ordinance, it references maintenance responsibilities. Starting with trees, there is specific contrary language in the State Code that says it does not include any responsibility to do some of the things that the City would define as being a responsibility of the community owner. Section 7006.13 of the Manufactured Housing Code very specifically references trees and that language is contrary to the language that the City is proposing. Section 7006.13L defines what a tree is and the definition is different. Section 7003.24 defines what a utility is and again it conflicts with the language contained in this proposed Ordinance. Section 66-3 of this proposed Ordinance conflicts entirely with the pre-empted language of Title 24 *Delaware Code* Chapter 44 which is the State Manufactured Installation Code. The reason he points that out is that even the inspectors for the City must be licensed and be certified by the State Installation Board. Even the standards are clearly State issued and State controlled that the City’s inspectors use to determine if an installation has been done properly. Therefore, the City cannot on their own determine what they think is acceptable or what should be added to the State Code. As he stated earlier, this has multiple difficulties. He would respectfully suggest that this body do what he was promised before by the Director before the current Director came into office, which is table it so that they can have a meaningful discussion as stakeholders on the conflicts so that you don’t spend unnecessary time proposing language and attempting to put it in place that will result inevitably in Court conflict. The final comment is regarding the licensing provision for the manufactured housing community he and his clients found in Subsection E – Provisional Order. This section

proposes that an unresolved violation issued conceivably by the City as an instant ticket could be deemed to be a nuisance without any definition of what a nuisance is. The license that you are required to have to run the community could be revoked or impacted with no meaningful explanation in the body of this Ordinance as to the need for, the requirement of or the desire to have a deprivation hearing or due process for the community owner when they have been alleged to have had a violation. The definition itself under the provision for provisional orders conflicts directly word for word with the existing State Code. There is absolutely no reason for this to be in conflict. It's contrary to the exclusive authority of the State for enforcement of this type of item and it leads to the impractical result of a community potentially having no license and not being able to operate as a community when they still have several hundred residents there.

They checked every couple of months with the City Executive asking where this stood and the City Executive kept saying "we will get back to you." When Mr. Hugg started working for the City, they checked with him every couple of months, specifically referencing the fact that they had a standstill agreement. No one ever denied that they had a standstill agreement and yet no one ever gave them an opportunity to give the feedback that they are giving tonight which would have been incredibly helpful in a drafting of an Ordinance within the confines of the concept of pre-emption.

Mr. Holden stated that Mr. Morton mentioned some Dover communities that would be impacted by this that he represents. Who are those communities? Responding to Mr. Holden, Mr. Morton stated that he represents Wild Meadows which is an RHP community. It changed ownership a couple of months ago. They are one of the five largest ownership groups in the Country. He has a tentative agreement to represent two of the other three owners, but it's not signed so he can't fully disclose who they are right now. It's certainly a concern both for those owners and for the association which represents all owners within the State of Delaware that this has to be consistent. The reason for pre-emption is so that you don't have vastly different rules and regulations in each community. As you can imagine, his view of the hourly requirements for a manager to be present is considerably different than one that was voiced earlier tonight by one of the other members because there is nothing in the State Code that requires that. He respectfully suggests that he doesn't see any other business where the City requires x number of hours for somebody who represents that business to be present and open and available for questions. Certainly, there is no such requirement for apartment complexes at the State level and they have exactly the same issue of pre-emption with residential apartments.

Mr. Holden stated that City Council held a First Reading of this Ordinance. He asked if Mr. Morton was able to be present for that? Responding to Mr. Holden, Mr. Morton stated that he wasn't even aware that it was going on because they had been told that they would be given notice before there was even a draft. The first notice that they received was received in his office on March 1, 2018 from Mr. Hugg indicating that it has already been drafted and that it has already had a First Reading. He doesn't think that it is fair or equitable to keep telling them that they are going to participate and then not let them participate in the meaningful discussion about the language.

Mr. Holden stated that they (the Planning Commission) had a fair amount of discussion over the concern over maintenance of common areas and the roadways really being the specific one. He

asked if Mr. Morton had any commentary regarding that. Responding to Mr. Holden, Mr. Morton stated that the Code (Delaware Code) has specific language in the section that he cited that extensively details what the community owner's responsibilities are including roads which means that it's been addressed by the Code. If you follow the logic of his comments, it would mean that that's what you have. You can't, and he means this in the most respectful way possible, try and impose some additional obligations. That is was pre-emption means.

Mr. Tolbert asked Mr. Morton to state the name of his organization and what his organization does in respect to this type of housing. Responding to Mr. Tolbert, Mr. Morton stated that we are the exclusive industry group for manufactured housing communities in the State of Delaware. It's called First State Manufactured Housing Association. It was founded in 1995 and has represented the communities, retailers, vendors and installers in this industry since that time. They participated in the drafting of the statewide Installation Code. It was approved by the legislature and became part of the regulations. They participated in the drafting of the Manufactured Housing Code. He drafted significant portions of that. He was also a chairperson of the committee that drafted the Residential Landlord Tenant Code. This is not a new era for him; it's an era of specialty for his firm and for him personally. His has absolutely no reservations about the accuracy of his concerns about pre-emption.

Mr. Tolbert stated that Mr. Morton mentioned Wild Meadows and his understanding is that Wild Meadows is a land lease development. The development next door to it is a mobile home development where the homes are permanent, but it's not land lease. Noble's Pond is also a land lease operation. Responding to Mr. Tolbert, Mr. Morton stated that Noble's Pond is not a manufactured housing community. The State Relocation Trust Authority has already decided that Noble's Pond is not a manufactured housing community.

Mr. Tolbert stated that Wild Meadows has asked the State to put a cap on the lease payments that they can pay and he thinks that the State refused to do that and they have had their hands full with that battle. Responding to Mr. Tolbert, Mr. Morton stated that one of the City Councilman is a long-term member of the community at Wild Meadows and has been an advocate for their issues in the legislature for many years. He would probably tell you that he was solely or significantly responsible for the imposition of rent justification in manufactured housing communities. There has been no State imposed limitation on the rent at Wild Meadows and we are half way through the required arbitration procedure for this year's rent with the homeowner's association for Wild Meadows tenants. They have had multiple ones of those and they have been quite successful in the court on those issues.

Dr. Jones stated that Mr. Morton referenced a case. Is it in the information that was provided? Responding to Dr. Jones, Mr. Morton stated that it is attached to the master copy and is specifically referenced and cited in the case. It is also a case that the City Solicitor is well aware of and has been since before this first version was passed eighteen months ago.

Ms. Maucher questioned if there are other stakeholders that should be informed of this process aside from your association such as representing particularly tenants in these types of communities? Responding to Ms. Maucher, Mr. Morton stated that he is fairly certain that Councilman Neil has notified all tenant advocacy groups of this pending Ordinance. He can tell

you that the board of the First State Manufactured Housing Association is aware and all four owners of the communities located within the City limits are aware of it. The Association itself is considering the possibility of funding any litigation if we can't have something worked out that will benefit everyone. They want to be at the table to discuss this. That is what they thought the deal was from the very beginning.

Mr. Tolbert closed the public hearing.

Mr. Holden stated that he thinks they had landed at some concerns that they aren't quite able to address without the City Solicitor's input to understand the legality of the path forward and the legality of trying to assure that their concerns will be addressed. Further, they are faced with a legal opinion shared that contravenes what the Ordinance is trying to get done. It seems like tabling the Ordinance to allow Staff and the City Solicitor time to give these comments some thought and address them. It seems like a reasonable path forward.

Ms. Maucher moved to table MI-18-03 Text Amendments: Manufactured Housing and Land Lease Communities (Dover Code of Ordinances, Chapter 66 and Zoning Ordinance, Article 3, Section 8 and Article 12) in order to meet with the interested parties and the City Solicitor to ensure that it complies with the State Law and it's not over reaching, seconded by Mr. Holt and the motion was carried 8-0 by roll call vote with Mr. Tolbert recused. Mr. Holden voting yes; due to the large number of outstanding questions. Mr. Roach voting yes. Ms. Edwards voting yes; for the reasons previously stated. Mr. Holt voting yes; to try to address all of our concerns before we tackle this problem again. Mr. Baldwin voting yes; for all of the reasons stated. Dr. Jones voting yes; for all of the reasons stated and to make sure that we are in compliance. Mrs. Welsh voting yes; due to all of the outstanding issues and in order to ensure that the issues are addressed before the application is brought back to the Planning Commission. Ms. Maucher voting yes; to ensure that there is sufficient input into the City Ordinance.

- 1) Update on Appointment of the Architectural Review Oversight Subcommittee of Planning Commission (in accordance with *Zoning Ordinance*, Article 10 §2.28)

Mrs. Melson-Williams stated that she has no new information to report on that. They are still seeking the confirmation from the two individuals that had previously served on the Subcommittee: Mrs. Kieffer and Dr. Chandler. Staff has reached out to them but they have not heard back from them as of this afternoon. They will continue to work on that.

Meeting adjourned at 8:14 PM.

Sincerely,

Kristen Mullaney
Secretary